Koriah bt Sudar v Pentadbir Tanah Kuala Langat

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01–238 OF 2011
AZAHAR MOHAMED, LIM YEE LAN AND ZAWAWI SALLEH JJCA
8 MARCH 2013

Land Law — Acquisition of land — Compensation — Objection to amount of compensation awarded — Whether judge failed in awarding interest of 8%pa to be paid on additional compensation awarded — Land Acquisition Act 1960 ss 8 & 48

The appellant's land was subjected to an acquisition under the Land Acquisition Act 1960 ('the Act') for 'Projek Pembinaan Jalan Masuk ke Projek Santuari Tanah Lembah Paya Indah' and was subsequently gazetted for acquisition pursuant to s 8 of the Act. The land area to be acquired was 1.576 hectares (3189405 acres) and the land administrator conducted enquiry pursuant to s 12 of the Act to determine the amount of the compensation payable to the appellant. The land administrator then awarded compensation in the amount of RM158,400 in respect of the land area not affected by TNB's rentis; RM93,400 in respect of the land area affected by TNB's rentis; and RM39,000 as legal fees. The appellant objected to the amount of compensation awarded by the land administrator and referred the matter to the High Court for its determination pursuant to s 38 of the Act. In the present appeal, it was contended by the appellant that the judicial commissioner ('JC') did not direct interest of 8% pa to be paid on the additional compensation awarded pursuant to s 48 of the Act. The appellant also submitted, inter alia, that the JC had erred in law in taking into consideration the presence of the rentis that were erected by TNB and by not following the Court of Appeal's decision in *Leong Kam Hoong v Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam and another appeal* [2001] 1 MLJ 186 (*Leong Kam Hoong & Anor*). It was further submitted that the High Court was bound to follow the decision of Court of Appeal based on the doctrine of stare decisis.

Held, allowing the appeal in part:

(1) This appeal was not maintainable by reason of express provision in s 68(1)(d) of the Courts of Judicature Act 1964. The learned JC erred in not directing interest be paid on the additional award as the land was possessed by the respondent in October 2000. It was a delay of more than 12 years. The court ordered that the interest of 8% pa to be paid on the sum of RM43,610 being the additional compensation awarded by the learned JC (see paras 16 & 23).

(2) It is trite that there is no right of appeal against the decision of a court of competent jurisdiction unless the right is expressly provided for. The right to appeal is a creature of statute. It cannot be given by mere implication (see para 18).

(3) The appeal on quantum was dismissed. The case *Leong Kam Hong* was decided before Act 488, which inter alia, inserted ss 40A, 40B, 40C and 40D (see paras 20–21).

[Bahasa Malaysia summary

Tanah perayu disubjekkan kepada pengambilan tanah di bawah Akta Pengambilan Tanah 1960 ('Akta') untuk 'Projek Pembinaan Jalan Masuk ke Projek Santuari Tanah Lembah Paya Indah' dan kemudiannya diwartakan untuk pengambilan tanah berikutan s 8 Akta. Kawasan tanah yang akan diambil alih adalah 1.576 hektar ('3189405 ekar') dan pentadbir tanah menjalankan siasatan berikutan s 12 Akta untuk menentukan jumlah pampasan yang kena dibayar kepada perayu. Pentadbir tanah kemudiannya mengawardkan pampasan sejumlah RM158,400 berkaitan kawasan tanah yang tidak terjejas oleh rentis TNB; RM93,400 berkaitan kawasan tanah yang terjejas oleh rentis TNB; dan RM39,000 sebagai fi guaman. Perayu membantah terhadap jumlah pampasan yang diawardkan oleh pentadbir tanah dan merujuk perkara tersebut kepada Mahkamah Tinggi untuk penentuannya berikutan s 38 Akta. Dalam rayuan ini, ia dihujahkan oleh perayu bahawa pesuruhjaya kehakiman ('PK') tidak mengarahkan faedah 8% setahun dibayar atas pampasan tambahan yang diawardkan berikutan s 48 Akta. Perayu juga berhujah, antara lain, bahawa PK telah tersilap dari segi undang-undang dalam mengambil kira pertimbangan kehadiran rentis yang didirikan oleh TNB dan dengan tidak mengikut keputusan Mahkamah Rayuan di dalam kes *Leong Kam Hoong v Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam and another appeal* [2001] 1 MLJ 186 (*Leong Kam Hoong*). Ia selanjutnya dihujahkan bahawa Mahkamah Tinggi terikat untuk mengikut keputusan Mahkamah Rayuan berdasarkan doktrin stare decisis.

Diputuskan, membenarkan sebahagian rayuan:

(1) Rayuan ini tidak dapat dikekalkan atas alasan peruntukan nyata di dalam s 68(1)(d) Akta Mahkamah Kehakiman 1964. PK yang bijaksana tersilap dalam tidak mengarahkan faedah dibayar atas award tambahan memandangkan tanah tersebut dimiliki oleh responden pada Oktober 2000. Ia adalah kelewatan yang lebih daripada 12 tahun. Mahkamah memerintahkan faedah 8% setahun dibayar atas jumlah RM43,610 sebagai pampasan tambahan yang diawardkan oleh PK yang bijaksana (lihat perenggan 16 & 23).

(2) Adalah nyata bahawa tiada hak untuk merayu terhadap keputusan mahkamah yang berbidang kuasa kompeten kecuali hak itu secara nyata

diperuntukkan. Hak untuk merayu dibentuk oleh undang-undang. Ia tidak dapat diberi dengan implikasi semata-mata (lihat perenggan 18).

(3) Rayuan atas kuantum ditolak. Kes *Leong Kam Hong & Anor* diputuskan sebelum Akta 488, yang mana antara lain, memasukkan ss 40A, 40B, 40C dan 40D (lihat perenggan 20–21).]

Notes

For cases on compensation, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2194–2241.

Cases referred to

Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2011] 5 CLJ 125, FC (refd)

Co-operative Central Bank Ltd (in receivership) v Feyen Development Sdn Bhd [1997] 2 MLJ 829, FC (refd)

Dr Koay Cheng Boon v Majlis Perubatan Malaysia [2012] 3 MLJ 173; [2012] 4 CLJ 445, FC (refd)

Duport Steels Ltd v Sirs [1980] 1 WLR 142, HL (refd)

Gurdev Kaur Bhag Singh v BSN Commercial Bank (M) Bhd [2002] MLJU 643; [2003] 1 CLJ 429, CA (refd)

Jitender a/l Singh Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal [2012] 1 MLJ 56; [2012] 2 CLJ 165, CA (refd)

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l Perumal [2001] 2 MLJ 417, FC (refd)

Leong Kam Hoong v Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam and another appeal [2001] 1 MLJ 186, CA (refd)

Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim [2008] 3 MLJ 753; [2008] 5 CLJ 201, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 68(1)(d)

Land Acquisition Act 1960 ss 8, 12, 38, 40A, 40B, 40C, 40D, 40D(1), (2), (3), 48, Forms K, N

Appeal from: Civil Application No MTS-15–325 of 2003 (High Court, Shah Alam)

Lim Yew Hock (Yew Hock & Loh) for the appellant.
Md Azhari bin Abu Hanif (State Legal Adivsor Office) for the respondent.

Zawawi Salleh JCA (delivering judgment of the court):

[1] This appeal was in respect of a land acquisition matter and was against

the decision of the learned judicial commissioner ('learned JC') who had on 28 February 2011 made the following award:

Total land area acquired by the respondent	1.576 hectares
Land area not affected by TNB's rentis:	0.330 hectares @ RM480,000 = RM158,400
Land area affected by TNB's rentis:	1.246 hectares @ RM110,000 = RM137,060
Total compensation RM158,400 + RM137,060	= RM295,460
Less compensation paid by land administrator	- 251,950
Additional compensation awarded	RM43,610

[2] However, the learned JC did not direct interest of 8%pa be paid on the additional compensation awarded pursuant to s 48 of the Land Acquisition Act 1960 ('the Act').

[3] We heard the appeal on 14 November 2012 and at its conclusion, we allowed it in part, ie the appeal on interest. We made no order as to costs. We now give our reasons for doing so.

FACTS OF THE CASE

[4] The facts of the case may be shortly stated. The appellant's land, described as Lot 5403, PM 2403, Mukim of Tanjung Dua Belas, district of Kuala Langat, Selangor, was subjected to acquisition under the Act Land Acquisition Act 1960 ('the Act') for the purpose of a project known as 'Project Pembinaan Jalan Masuk ke Project Santuari Tanah Lembah Paya Indah'.

[5] The said land was *gazetted* for acquisition pursuant to s 8 of the Act vide Warta Kerajaan Negeri Selangor Gazette dated 30 March 2000. The land area to be acquired was 1.576 hectares (3189405 acres).

[6] The land administrator conducted enquiry pursuant to s 12 of the Act to determine the amount of the compensation payable to the appellant. At the conclusion of the enquiry, the land administrator awarded compensation in the amount of RM158,400 in respect of the land area not affected by TNB's rentis and RM93,400 in respect of the land area affected by TNB's rentis. RM39,000 was awarded as legal fees.

[7] On 16 June 2000, the appellant objected to the amount of compensation awarded by the land administrator by filing Form N requesting the land administrator to refer the matter to the court for its determination pursuant to s 38 of the Act.

[8] The learned JC heard the land reference with the aid of two assessors pursuant to s 40A of the Act.

[9] In his judgment at pp 5–6 of *rekod rayuan tambahan*, the learned JC had this to say:

> 7. Kedua-dua pengapit iaitu Encik Raja Abdul Aziz Azlan dan Puan Iwati Mohamed Shariff telah meneliti kandungan laporan penilaian oleh Pemohon dan juga JPPH setelah mendengar hujahan kedua-dua pihak, telah memutuskan bahawa bahagian nilaian tanah yang tiada rentis sebanyak 0.3301 hektar atas kadar RM480,000.00 hektar, iaitu RM158,000 manakala bahagian tanah yang ada rentis dinilaikan sebanyak 1.246 hektar atas nilaian RM110,000 hektar iaitu 137,000, menjadikan nilai tanah keseluruhan yang diambil sebanyak RM295,000.
>
> Ditolak pampasan/award yang diberikan oleh Pejabat Tanah sebanyak RM251,550, Award Tambahan sebanyak RM43,610.00.
>
> 8. Mahkamah telah merekodkan keputusan pengapit-pengapit yang dibuat secara consensus dan ditandatangani, menurut peruntukan seksyen 47 Akta Pengambilan Tanah 1960.

[10] Before us, Encik Lim Yew Hock, learned counsel for the appellant submitted that the learned JC had erred in law when His Lordship took into consideration the presence of the rentis that were erected by a third party (TNB) and failed to follow the Court of Appeal's decision in *Leong Kam Hoong v Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam and another appeal* [2001] 1 MLJ 186. In delivering the judgment of the court in the said case, Siti Norma Yaacob JCA (as Her Ladyship then was) had this to say:

> We agree with the appellant's contention as we consider it to be unjust and unconscionable that they deprived of the full value of their lands by the presence of the rentis that were erected by a third party. In any event if Tenaga Electric National had wanted the land permanently, it could, under s 55(3) and (4) of the Electricity Act 1949, have requested the state authority to acquire that portion of land and compensation would have to be paid to the landowners under the Act without due regard to the overhead rentis. Likewise the appellants should be accorded the same consideration and treatment and Lot 787 valued without regard to the overhead rentis.

[11] Learned counsel for the appellant further submitted that the High Court was bound to follow the decision of Court of Appeal based on the doctrine of stare decisions. In support of his submission, learned counsel relied upon the following cases:

(i) *Co-operative Central Bank Ltd (in receivership) v Feyen Development Sdn Bhd* [1997] 2 MLJ 829; and

(ii) *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l Perumal* [2001] 2 MLJ 417.

[12] On the other hand, Encik Md Azhari bin Abu Hanif, learned assistant state legal advisor appearing for the respondent argued that this appeal was not maintainable by reason of the express provision in s 40D of the Act.

[13] We were in full agreement with the submission of the learned assistant state legal advisor. There was no doubt that the real issue in this appeal was quantum. During the hearing of the appeal, most of the points advanced by learned counsel for the appellant revolved around the adequacy of the compensation awarded by the learned JC. According to learned counsel for the appellant, the correct calculation would be as follows:

Total land area acquired by the respondent	1.576 hectares
Market value as decided by the assessor @ RM480,000 per hectare	
Total compensation 1.576 x RM480,000	= RM756,480
Less compensation paid by land administrator	- RM251,850
Less payment	- RM43,610
	RM461,020

[14] Now, s 40D(1), (2) and (3) of the Act states as follows:

> Decision of the Court on compensation
>
> 40D (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
>
> (2) Where the assessors have each arrived at a decision which differs from each other than the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessor and the amount of compensation to be awarded shall be the amount decided upon by that assessor.
>
> (3) Any decision made under this section is final and there shall be no further appeal to a higher court on the matter.

[15] There was a plethora of judicial authorities to the effect that the appellant was precluded from appealing against the order of compensation given by the learned JC who sat with the aid of two assessors under s 40D of the Act. To name but a few, are as follows:

(a) *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125; and

(b) *Jitender a/l Singh Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal* [2012] 1 MLJ 56; [2012] 2 CLJ 165.

[16] We were also of the considered opinion that this appeal was not maintainable by reason of express provision in s 68(1)(d) of the Courts of Judicature Act 1964 which provides as follows:

> Non appealable matter.
>
> 68 (1) No appeal shall be brought to the Court of Appeal in any of the following case:
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) where, by any written law for the time being in force, the judgment or order of the High Court, is expressly declared to be final.

[17] Section 40D of the Act and s 68(1)(d) of the Courts of Judicature Act 1964 are very clear and we must give effect to the unambiguously expressed intent of these sections. In the case of *Duport Steels Ltd v Sirs* [1980] 1 WLR 142, Lord Diplock had this to say:

> Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they consider that the consequences of doing so would be inexpedient or even unjust or immoral.

[18] It is trite that there is no right of appeal against the decision of a court of competent jurisdiction unless the right is expressly provided for. The right to appeal is a creature of statute. It cannot be given by mere implication (see *Gurdev Kaur Bhag Singh v BSN Commercial Bank (M) Bhd* [2002] MLJU 643; [2003] 1 CLJ 429; *Dr Koay Cheng Boon v Majlis Perubatan Malaysia* [2012] 3 MLJ 173; [2012] 4 CLJ 445 (FC); *Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim* [2008] 3 MLJ 753; [2008] 5 CLJ 201.

[19] The Act, being a special legislation, setting out a self-contained code, the general law on appeals is therefore impliedly excluded.

[20] It is also pertinent to note that *Leong Kam Hong v Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam* was decided before Act 486, which, inter alia, inserted ss 40A, 40B, 40C and 40D. These new provisions came into force on 1 March 1998.

[21] For the above reasons, the appeal on quantum was dismissed.

[22] Learned counsel for the appellant further argued that the learned JC

had erred in law in not directing interest of 8%pa be paid on the additional compensation awarded. We agreed with the submission. Section 48 of the Act provides as follows:

> 48. Land Administrator may be required to pay late payment charges.
>
> If the sum which in the opinion of the Court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the Court may direct that the land Administrator shall pay late payment charges on such excess at the rate of eight per cent per annum from the date on which the Land Administrator took possession of the land to the date of payment of such excess to the Court or to the person interested.

[23] We were of the considered opinion that the learned JC erred in not directing interest be paid on the additional award ('late payment charges') as the land was possessed by the respondent in October 2000. It was a delay of more than 12 years.

[24] We accordingly ordered that interest at 8%pa be paid on the sum of RM43,610, being the additional compensation awarded by the learned JC, from 5 October 2000 (date of the issuance of 'Borang K') to 11 July 2012 (the date of the sum RM43,610 credited into the appellant's solicitors client's account).

[25] Appeal allowed in part.

Appeal allowed in part.

Reported by Afiq Mohamad Noor